

## REMARKS

Claims 1-22 have been presented for examination. Claims 1-2 and 12-13 have been rejected. Claims 3-11 and 14-21 have been objected to and claim 22 has been allowed. Applicants would like to thank the Examiner for identifying the allowable subject matter.

### Objections to the Drawings

Figure 1 has been objected to as not the legend such as "Prior Art."

Applicants have amended Figure 1 to reflect the appropriate legend.

### Rejections under 35 U.S.C. §103(a)

Claims 1-2, and 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tate et al. (U.S. Pat. 6,650,697). Applicants respectfully traverse these rejections.

There are three basic criteria to establish a *prima facie* case of obviousness under 35 U.S.C. §103(a). First, there must be some suggestion or motivation in the cited references to modify or combine their teachings; second, there must be reasonable expectation of success; and third, the prior art references must teach or suggest all the claim limitations. *See* M.P.E.P §2142.

As to claim 1, Tate et al. does not disclose, teach, suggest, or provide motivation for transmitting a global desired receive power spectral density (GDR PSD) as recited in claim 1. "To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art." *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). *See also* M.P.E.P §2143.03. In fact, Tate et al. teaches away from transmitting the GDR PSD. Tate et al. states that "[t]o alleviate the requirement to back-off all up-link performance ... the present invention partitions the frequency spectrum based on an estimate of the loop length ..." (See the Abstract, emphasis added). Tate et al. first allocates frequency bandwidth to a wireline network and then partitions the bandwidth based on an estimated loop length of each subscriber.

According to Tate et al., “[t]he present invention makes use of available spectrum (at frequencies above the maximum frequency  $f_{\max}$  of the longest loop) that are useable without power back-off.” (See col. 11, lines 8-13, emphasis added). Thus, using the teachings of Tate et al., it would not have been obvious to transmit GDR PSD and using it to determine upstream transmit power spectral density as recited in claim 1. Accordingly, claim 1 is patentably distinguishable from Tate et al.

Further, the Examiner has not provided any citation in Tate et al. disclosing, suggesting, or providing motivation for the use of a GDR PSD. In fact, even the Examiner has stated that Tate et al. “fail to explicitly disclose transmitting a global desired receive power spectral density (GDR PSD).” “Fact that the claimed invention is within the capabilities of one of ordinary skill in the art is not sufficient by itself to establish *prima facie* obviousness.” See M.P.E.P §2143.01. In the cited sections, Tate et al. describes “blind” and “communicative” methods of calculating PSD. Each one of the described methods requires estimating the path loss characteristics for the given path. Neither one of the methods suggests transmitting a GDR PSD.

Furthermore, Tate et al. does not disclose the use of a management system for configuring the GDR PSD as recited in claim 1. The management system 69 of Tate et al. is used to determine the longest loop length and operating frequency band limits (see col. 10, lines 28-32). Thus, Tate et al. does not teach or suggest each and every limitation of claim 1 as is required for a rejection under 35 USC §103(a). Accordingly, claim 1 is further patentably distinguishable from Tate et al.

Claims 12-13 have been rejected under similar rationale as claim 1. Accordingly, claims 12-13 are patentably distinguishable from Tate et al. for at least the same reasons as claim 1.

Applicants believe that this application and claims herein are in a condition for allowance. Should the Examiner have further inquiry concerning these matters, the Examiner is requested to please contact the below named attorney for Applicants.

Respectfully submitted,



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